



# Oglala Sioux Tribe

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the matter of

WT Docket No. 99-266

Extending Wireless  
Telecommunications  
Services to Tribal Lands

## COMMENTS OF THE OGLALA SIOUX TRIBE

The Oglala Sioux Tribe respectfully submits the following comments on the above-entitled Notice of Proposed Rulemaking and makes provision for possible future comment. The Oglala Sioux Tribe is situated on the Pine Ridge Indian Reservation located on the southwestern corner of the state of South Dakota with approximately 30,000 citizens on 1,771,082 reservation acres. The telephone penetration rate on the Pine Ridge Indian Reservation is approximately thirty percent (30%) for residential households. We are in need of enhanced 911 Emergency Services, improved Telemedicine and Education telephone services. We invited Western Wireless Corporation to present a proposal for wireless services on 03 November 1999.

The Oglala Sioux Tribe is not an expert with respect to technical telecommunications matters and, therefore, will not make comment, at this time, upon some of the more technical of the possible regulatory initiatives presented in the proposed rulemaking. We defer to Western Wireless Corporation for much of the more technical comments based on their research and the knowledge of the Pine Ridge Indian Reservation that we have shared with them. This comment will touch on the aspects of Tribal sovereignty and the Federal trust relationship raised in the various provisions of the proposed rulemaking.

An important point of clarification concerns the use of the term "Indian lands". Indian lands are referred to as Indian Country, the definition of which is provided at 18 U.S.C. 1151. Indian Country includes reservations formal or informal<sup>1</sup>, Indian allotments and dependant Indian communities. The definition of Indian Country was originally crafted for Federal criminal law

<sup>1</sup> See *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993).

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purposes; however, it applies equally to Federal civil jurisdiction<sup>2</sup>. We suggest the Commission adopt this definition in its further rulemaking. Use of the term "Indian Country" will assure uniformity.

With respect to possible regulatory initiatives designed to encourage wireless carriers to provide basic service on Tribal lands, the granting of "additional flexibility" in the licensing procedure should be predicated upon the existence of, and compliance with, a binding agreement between the licensee and the relevant Tribal authority. The importance of Tribal sovereignty in this procedure is paramount. Inherent in Tribal sovereign authority is the right to control certain activities on Tribal lands. This includes the right to regulate and tax non-member corporations doing business on Tribal lands. It is a fundamental premise in the law that a Tribe may regulate, through licensing, taxation or other means, the activities of non-members who enter into consensual relationships with the Tribe or its members through commercial dealing, contracts, leases or other arrangements. A wireless carrier wishing to provide service on Oglala Sioux Tribal lands must have tribal consent as a practical matter; therefore, whether it imposes additional burdens upon licensees is a moot question. The question of whether Oglala Sioux Tribal government consent should be required for the Commission to approve transfers and assignments that affect the service provided on our reservation is necessary.

With respect to the implementation of such a requirement, the Oglala Sioux Tribe is encouraged by the awareness of the Commission to the importance of the special trust relationship between Tribal governments and the Federal government. In considering the licensing process for a service provider to engage in the provision of wireless communications on Tribal lands, the Federal government must consult with the Tribe on a government-to-government basis. This process is the foundation of the trust responsibility of the United States for Indian tribes.

Finally, the Oglala Sioux Tribe is encouraged also by the breadth of the possible marketplace incentives presented in the Notice of proposed Rulemaking. The consideration to provide licensees with special licensing areas and bidding credits and the potential availability to Tribes of drop-in licenses are possibilities that represent effective methods to address our low residential telephone penetration rates. We recognize the need for this kind of planning and innovative action in order to effectively deal with the variety of unique situations that exist on our reservation.

We wish to thank Chairman Kennard and his colleagues on the Commission for their continued efforts and commitment to solve this problem in Indian Country. We look forward to further participation in the rulemaking process in this very important matter.

Sincerely,

Harold Dean Salway  
President, Oglala Sioux Tribe

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<sup>2</sup> California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987); Decoteau v. District County Court, 420 U.S. 425 (1975).